

The opinion in support of the decision being entered today is *not* binding
precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARKUS BAUMEISTER, STEFFEN HAUPTMANN, and
KARIN KLABUNDE

Appeal 2007-1955
Application 09/841,965
Technology Center 2100

Decided: August 30, 2007

Before LEE E. BARRETT, JOSEPH F. RUGGIERO, and LANCE
LEONARD BARRY, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of
claims 1 and 3-7. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Appellants' claimed invention relates to a network system for dynamically determining a user's access rights to an access controlled object. A software system filter is utilized to evaluate user access rights to the access controlled object based on data not available until the time of access. The filter also evaluates additional data which occurs while the user has access to the access controlled object and monitors any change in the access rights which cause withdrawal of the access rights to the access controlled object. (Specification 1-2).

Claim 1 is illustrative of the invention and it reads as follows:

1. A network, comprising:

terminals;

a software system distributed over all the terminals; and

at least one access controlled object,

wherein the software system includes at least a filter which evaluates access rights of a user for the access controlled object based on data which are not available until the time of access, the filter further evaluating additional data occurring while the user has access to the access control object, monitoring a change in the access rights, and triggering withdrawal of the access rights to the access controlled object.

The Examiner relies on the following prior art references to show unpatentability:

Brown	US 5,941,947	Aug. 24, 1999
Peterka	WO 99/66714 A1	Dec. 23, 1999

Claims 1, 3, 4, and 7 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Peterka. Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterka in view of Brown.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUES

(i) Under 35 U.S.C § 102(a), does Peterka have a disclosure which anticipates the invention set forth in claims 1, 3, 4, and 7?

(ii) Under 35 U.S.C § 103(a), with respect to appealed claims 5 and 6, would one of ordinary skill in the art at the time of the invention have found it obvious to combine Brown with Peterka to render the claimed invention unpatentable?

PRINCIPLES OF LAW

1. ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76, 77 USPQ2d 1321, 1325-26 (Fed. Cir. 2005),

citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). Anticipation of a patent claim requires a finding that the claim at issue “reads on” a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

2. OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

35 U.S.C. § 102(a) REJECTION

With respect to the 35 U.S.C. § 102(a) rejection of independent claim 1 based on the teachings of Peterka, the Examiner indicates (Answer 3-5) how the various limitations are read on the disclosure of Peterka. In particular, the Examiner directs attention to the receiver terminal 160, access controller 240, and filter in the form of a permission code module 220 all as illustrated in Figures 1 and 2 of Peterka.

Appellants' arguments in response assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Peterka so as to establish a prima facie case of anticipation. Appellants' arguments (Br. 5-6; Reply Br. 2-3) focus on the contention that, in contrast to the language of claim 1 which requires the evaluation of additional access rights data that occurs while a user has access to an access controlled object, Peterka determines access rights conditions before a user has access to an access controlled object.

Our review of the disclosure of Peterka, however, finds ample evidence to support the Examiner's position. In particular, we refer to Peterka's discussion of the monitoring of receiver conditions, in particular, the time-related conditions, beginning at page 21, line 11. In the particular example given by Peterka, children are permitted to watch television only within a certain time frame, e.g., between 8 am and 8 pm. It is apparent to us that in order for Peterka to implement such a time-related condition, the identification of a user, i.e., a child, must be determined, and the time of day has to be monitored to enforce the time limitation restriction by withdrawing the child's access rights. Further, in order for Peterka to enforce such child time limitation restriction, we fail to see how, Appellants' arguments to the

contrary notwithstanding, Peterka would not have to monitor the current time while the child has access to the access controlled object, i.e., the television, as claimed.

In view of the above discussion, since all of the claimed limitations are present in the disclosure of Peterka, the Examiner's 35 U.S.C. § 102(a) rejection of independent claim 1, as well as dependent claims 3 and 4 not separately argued by Appellants, is sustained.

Turning to a consideration of the Examiner's 35 U.S.C. § 102(e) rejection of independent claim 7 based on Peterka, we sustain this rejection as well. Contrary to Appellants' argument (Br. 11; Reply Br. 6-7), we find that the claimed "bus" connection of the plural terminals does not distinguish over Peterka's connection of plural terminals (one of which is terminal 160) through a hub 150 to network cable 145 as illustrated in Figure 1 of Peterka. Similarly, we find that the recitation of "message" generation by the claimed filter does not distinguish over the data output from Peterka's filter (permission code module 140) through the access controller 240 over the network to control access of applications to receiver 160.

35 U.S.C. § 103(a) REJECTION

Appellants' arguments in response to the obviousness rejection of appealed independent claim 5 based on the combination of Peterka and Brown assert a failure by the Examiner to establish a prima facie case of obviousness since, even if combined, all of the claimed limitations would not be taught or suggested by the applied prior art references. In particular, Appellants contend (Br. 12-13; Reply Br. 4-5) that, in contrast to the claimed

invention, neither Brown nor Peterka discloses the node-tree data structure of access rights as claimed.

Our interpretation of the disclosure of Brown, relied on by the Examiner as disclosing the claimed access rights manager tree data structure, coincides with that of Appellants. We agree with Appellants that, at best, Brown discloses a directory of available content objects in the form of a node tree, but there is no disclosure of each node having a list of permitted users for accessing access controlled objects as claimed.

The Examiner, in response, calls attention (Answer 11-12) to Brown's disclosure of an access control matrix in which permitted users of each content node are listed in the columns of the matrix. We do not find this convincing since the row-column matrix of access rights disclosed by Brown does not satisfy the claimed requirement of a tree structure for the list of permitted users.

Accordingly, we are of the opinion that, since the Brown reference does not overcome the deficiencies of Peterka in disclosing the claimed node-tree data structure feature, the references, even if combined, do not support the obviousness rejection. We, therefore, do not sustain the Examiner's obviousness rejection of independent claim 5, nor of claim 6 dependent thereon.

CONCLUSION

In summary, we have sustained the Examiner's 35 U.S.C. § 102(a) rejection of appealed claims 1, 3, 4, and 7, but have not sustained the 35 U.S.C. § 103(a) rejection of claims 5 and 6. Accordingly, the Examiner's decision rejecting appealed claims 1 and 3-7 is affirmed-in-part.

Appeal 2007-1955
Application 09/841,965

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(effective September 13, 2004).

AFFIRMED-IN-PART

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